

ID: CCA_2010032209083550

Number: **201030028**

Release Date: 7/30/2010

Office:

UILC: 4975.03-00

From:

Sent: Monday, March 22, 2010 9:10:03 AM

To:

Cc:

Subject: RE: Notice 2004-8 - Prohibited Transaction Issue

These are my thoughts: Based on the facts that have been set forth, I think that we would have a difficult time arguing that there is a prohibited transaction. To have a prohibited transaction you have to have a transaction between a disqualified person and a qualified plan (In this case the Roth IRAs.). I am assuming that the _____ owned equal shares of the _____, so therefore there would be only a 20% interest in the _____ that each _____ would own. Not sufficient to meet the ownership test for the _____ to be a disqualified person under section 4975(e)(1)(G) of the Code. This same ownership analysis would also apply to the Roth IRA Corporation. This looks more like a Swanson case, just with more IRA owners involved. Keep in mind just because there is a tax benefit that the IRA owner derives from setting up the investment, does not necessarily mean there is a prohibited transaction. We would have to prove that the Roth IRA owners derived a personal benefit to argue that a prohibited transaction occurred under section 4975(c)(1)(D) or (E) of the Code. I am not seeing a personal benefit that the Roth IRAs owners are deriving, e.g. compensation paid to the Roth IRA owners. Regarding the leasing of _____, there is no transaction between the Roth IRAs and a disqualified person, the Roth IRA Corporation is deriving a benefit from the leasing arrangement and and service agreement and getting paid dividends not the Roth IRA owners.

Please, let me know if I am missing something.